



FOR CLERK USE ONLY

City Council

Item No. 5

## CITY COUNCIL AGENDA FACT SHEET

Finance  
Department16-Mar-10  
Requested Date**1. Request:**

Council Approval

☒Information Only/  
Presentation☐

Other (specify)

☐

Hearing

☐**2. Requested Action:**

Authorize the City Manager to execute the Agreement with David Taussig and Associates, Inc. for Mello-Roos Administration Services for CFD No. 2003-1.

**3. Fiscal Impact:**

Revenue:

Increase

☐

Source: \_\_\_\_\_

Decrease

☐

Amount: \_\_\_\_\_

Cost:

Increase

☐

Source: \_\_\_\_\_

Decrease

☐

Amount: \_\_\_\_\_

Does Not Apply

☒

Admin fees included in budget annually.

**4. Reviewed By:**Finance Dept. on 2/26/2010By: [Signature]

Comments: \_\_\_\_\_

City Attorney on \_\_\_\_\_

By: \_\_\_\_\_

Comments: \_\_\_\_\_

*Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.*

CLERK USE ONLY

CITY COUNCIL DATE:

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify)

☐Reviewed by: City Clerk \_\_\_\_\_  
Date \_\_\_\_\_City Manager \_\_\_\_\_  
Date \_\_\_\_\_

# **CITY COUNCIL AGENDA REPORT**

**SUBJECT: David Taussig & Associates, Inc. Agreement**

**AGENDA DATE: March 16, 2010**

**PREPARED BY: Judy Hashem, Finance Director**

**APPROVED FOR AGENDA BY: Victor M. Carrillo, City Manager**

**RECOMMENDATION: City Council is requested to take the following action:**

- 1. Authorize the City Manager to execute the Agreement with David Taussig and Associates, Inc. for Mello-Roos Administration Services for CFD No. 2003-1.**

**FISCAL IMPACT: The professional services fee as stated in the Scope of Work shall not exceed \$6,000 with additional out-of-pocket expenses up to \$500. Any extra-ordinary services requested outside of the Scope of Work will be provided based on hourly rates included in the fee schedule. The professional services agreement will be paid from the Bravo-Victoria/Eastside Village Assessment Fund #228. Administration costs are included in the annual tax levy.**

**BACKGROUND INFORMATION:**

**Beginning in FY 2004-05 the City contracted with David Taussig & Associates to administer the special tax requirements for this Mello-Roos Community Facilities District. The special tax requirement must be reported to the County of Imperial by August 10, 2010, in order to place the levy on the property tax bill for Fiscal Year 2010-11.**

**Staff recommends the City continue the contractual relationship with Taussig & Associates, as per the Scope of Work included in the attached agreement and authorize the City Manager to execute the attached agreement.**

**DOCUMENTS ATTACHED:**

- 1. Agreement**

**Agenda Item No. \_\_\_\_**

**Page \_\_\_\_ Of \_\_\_\_**

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the 17th day of March, 2010, by and between the City of Calexico ("City") and DAVID TAUSSIG & ASSOCIATES, Inc. ("Consultant").

### RECITALS

A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

### AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.
2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than June 30, 2011. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.
3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed \$6,000.00 without additional authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff. When payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.

10. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.

13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be

addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calexico, City Manager  
608 Heber Ave.  
Calexico, CA 92231

If to Consultant: **David Taussig & Associates, Inc.**  
1301 Dove Street, Suite 600  
Newport Beach, CA 92660

15. Consultant's Books and Records.

- a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.
- e. Notwithstanding the above, all computer financial models including without limitation compilations of formulas and spreadsheet models used or developed by the Consultant in performing its work are proprietary and shall remain property owned solely by the Consultant. Consultant acknowledges that City is subject to the Public Records Act. If a public records request is made for Consultant's documents, City will provide notice to Consultant of the City's obligation to provide the documents for public

inspection. If Consultant does not seek an injunction or notify City of their intent to prohibit disclosure of any documents within 5 days of receipt of the City's notice of same, then City will be allowed to provide such documents for public inspection. Consultant agrees to indemnify and hold City harmless for any disclosure made under the Public Records Act or litigation resulting from Consultant's action to prohibit disclosure of such records.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

CONSULTANT:

By: \_\_\_\_\_  
Victor M. Carrillo  
City Manager

By: \_\_\_\_\_  
David Taussig  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Jennifer M. Lyon  
City Attorney

\_\_\_\_\_  
Lourdes Cordova  
City Clerk

## **EXHIBIT A**

### **MELLO-ROOS SPECIAL TAX ADMINISTRATION SERVICES**

#### **COMMUNITY FACILITIES DISTRICT NO. 2003-1 OF THE CITY OF CALEXICO**

#### **SCOPE OF WORK**

David Taussig & Associates, Inc. ("Consultant") shall provide financial consulting services to assist the City of Calexico ("Client") in the administration of Client's Community Facilities District ("CFD") No. 2003-1. The focus of these services shall be to determine the special tax rates and to facilitate the collection of the special taxes in fiscal year 2010-11 by the County of Imperial.

The specific activities and tasks to be performed under this Scope of Work include the following:

##### **Task 1 Land Use Research**

This task involves determining, gathering and organizing the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research:** Identify and obtain copies of all final tract or parcel maps for CFD No. 2003-1. Determine acreage for each parcel.
- 1.2 Development Research:** Determine building permit activity as of January 1 of each year. Identify building permit issuance date, tract, and lot for each new building. Review current Assessor Parcel maps to determine which parcel numbers will be valid for each fiscal year.
- 1.3 Database Management:** Create automated parcel database to include all parcels. Data items will include Assessor Parcel Number, corresponding tract and lot number, acreage, and building permit issuance date.

##### **Task 2 Classification of Property**

This task involves application of the Rate and Method of Apportionment of the Special Tax to determine the appropriate special tax classification for each parcel located within CFD No. 2003-1, and includes the following subtasks:

- 2.1 Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.
- 2.2 Taxable Property:** Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax class.

### **Task 3 Financial Analysis**

This task involves calculating the Special Tax Requirement for each fiscal year and allocating it to property in CFD No. 2003-1, and includes the following subtasks:

- 3.1 Determine Special Tax Requirement:** Assist Client with the preparation of an administrative expense budget. Confirm costs for park and open space maintenance, flood control and storm protection services, and related facilities. Determine any other charges or credits to tax levy.
- 3.2 2010-11 Special Tax Rates:** Based on tax classifications and special tax requirement, compute the fiscal year 2010-11 special tax rates for all classifications of taxable property.

### **Task 4 Report Preparation**

This task includes the preparation of an Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes for CFD No. 2003-1. Included in the report is a list of special taxes by Assessor's Parcel which can be used as the exhibit to the resolution authorizing the levy and collection of special taxes for fiscal year 2010-11.

### **Task 5 Submittal of Special Taxes to County of Imperial**

This task involves submitting the special tax levy on or before August 10, of each year, or such other date specified by the County of Imperial to the Auditor-Controller for inclusion on the fiscal year 2010-11 consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

### **Task 6 Delinquent Property Owner Research**

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Delinquent Special Tax Report:** Review special tax payment information from the County of Imperial. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes:** Assist Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

### **Task 7 Roll Changes and Adjusted Property Tax Bills**

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

### **Task 8 Responses to Property Owner Questions**

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

### **Task 9 Meetings**

Consultant will attend the City Council meeting at which the resolution authorizing the levy and collection of special taxes is scheduled for adoption.

### **Task 10 CFD Disclosure**

This task involves assisting Client meet the annual disclosure requirements of SB 1464, the 1992 Mello-Roos Amendment Bill, and includes the following:

- Provide special tax disclosure documents to Client for resale properties pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code as stated in SB 1464.

## **EXHIBIT B**

### **MELLO-ROOS SPECIAL TAX ADMINISTRATION SERVICES**

#### **COMMUNITY FACILITIES DISTRICT NO. 2003-1 OF THE CITY OF CALEXICO**

### **FEE SCHEDULE**

#### **Professional Services Fee**

Consultant shall charge the following hourly fees for services related to Tasks 1 through 10:

Managing Director	\$190/Hour
Vice President	\$180/Hour
Manager	\$170/Hour
Senior Associate/Engineer	\$150/Hour
Associate	\$130-140/Hour*
Senior Analyst	\$125/Hour
Analyst	\$115/Hour
Research Assistant	\$ 905/Hour

\*Depending on Experience.

Subject to the limitations below, fees related to Tasks 1 through 10 shall not exceed \$6,000 for fiscal year 2010-11. Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details of services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee required to complete Tasks 1 through 10 is less than \$6,000. Alternatively, if the Scope of Work can be completed for less than the maximum amount, only the hours actually expended will be billed.

In addition to fees for services, Client will reimburse Consultant for travel, photocopying, database services or materials, facsimile and telephone calls, clerical services, and other out-of-pocket expenses, in an amount not to exceed \$500.

#### **LIMITATIONS**

If the maximum amount has been exceeded as a result of "extraordinary" consulting services required in connection with Task 8, such additional services in excess of the maximum shall be billed at the hourly rates listed above. For the purposes of this section, services rendered in connection with Task 8, which exceed \$1,000 shall be considered extraordinary.

Additional services other than those necessary to amend errors on the part of Consultant in Tasks 1 through 10 are not covered by the maximum fee listed above.

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